IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

JAMES O. MCLAMB, Plaintiff

V. NO. 2:92CV071-B-A

ELZY J. SMITH, ET AL, Defendants

O P I N I O N

This matter is before the court, sua sponte, for consideration of dismissal of this cause. Plaintiff, an inmate currently incarcerated at the Mississippi State Penitentiary, files this complaint pursuant to 42 U.S.C. §1983. The defendants are Elzy Smith, Circuit Judge of Coahoma County, Mississippi; Lawrence Mellen, District Attorney of Coahoma County; the Justices of the Mississippi Supreme Court; and Hazel Keith, an employee of the North Carolina judicial system. Plaintiff seeks monetary damages of 188.3 million dollars.

Plaintiff states that he was convicted of a criminal offense in 1965 in Wake County, North Carolina, in which he claims to have entered a guilty plea without benefit of counsel. In 1980 he was charged with armed robbery of a Kroger food store in Clarksdale, Mississippi. He alleges that defendant Keith mailed plaintiff's court records from North Carolina to defendants Smith and Mellen for them to be used against him in sentence enhancement proceedings. He alleges this was improper in that his conviction

was obtained without him having legal counsel and could therefore not be used against him under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and under Gideon v. Wainwright, 372 U.S. 335 (1963)

Although plaintiff's allegations are unclear, it appears that he was found guilty in the Circuit Court of Coahoma County and Judge Smith considered the 1965 conviction, ruled that plaintiff was a habitual criminal, and sentenced him to life without parole.

Plaintiff contends that in 1985 the Mississippi Supreme Court reversed his sentence. He then alleges that Judge Smith and District Attorney Mellen conspired to illegally use the same inadmissible evidence, which resulted in him being sentenced to 38 years without the possibility of parole. After plaintiff's attorney moved to correct this, these two defendants once more used the 1965 conviction to set sentence at 33 years without parole.

Finally, plaintiff alleges that the justices of the Supreme Court of the State of Mississippi conspired with defendants Smith and Mellen to illegally hold plaintiff in prison by refusing to release him.

After carefully considering the contents of the pro se complaint and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusion.

When a state prisoner brings a §1983 action seeking damages, the trial court must first ascertain whether a judgment in favor of the plaintiff in the §1983 action would necessarily imply the invalidity of his conviction or sentence. Heck v. Humphrey, 114 S.Ct. 2364, 2372 (1994). If it would, the prisoner must show that his conviction has been "reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus" in order to state a claim. Id. at 2373. If not, dismissal of the §1983 action is appropriate.

Clearly, any judgment in favor of the plaintiff would imply the invalidity of his conviction or sentence. Just as clearly, his conviction has not been "reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." Therefore, his complaint is legally frivolous under 28 U.S.C. §1915(d). Consequently, it should be dismissed with prejudice. Stephenson v. Reno, 28 F.3d 26 (5th Cir. 1994).

Of even more import, several of the defendants in this case are state court judges, and one is a district attorney. Therefore, the doctrine of absolute immunity should be considered as a threshold matter in making a §1915(d) determination.

> Because absolute immunity is properly viewed as "immunity from suit rather than a mere defense to liability," Mitchell, 472 U.S. 526, 105 S.Ct. at 2815, [Mitchell v. Forsythe, 472 U.S. 511, 105 S.Ct. 2806 (1985)] it is appropriate for the district courts to resolve the question of absolute immunity before reaching the Heck analysis when feasible. If a defendant is dismissed on absolute

> immunity grounds, it becomes clear that the §1983 plaintiff will never have a claim against that defendant based on the particular facts alleged, even if the plaintiff is a state prisoner who eventually satisfies the precondition to a valid §1983 claim under Heck. [Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994].

Judicial officers are entitled to absolute immunity from claims arising out of acts performed in the exercise of their judicial functions. Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993). The alleged magnitude of the acts is irrelevant. Young v. Biggers, 938 F.2d 565, 569 n.5 (5th Cir. 1991). Judicial immunity can be overcome only by showing that the actions complained of were nonjudicial in nature or by showing that the actions were taken in the complete absence of all jurisdiction. Mireless v. Waco, 112 S.Ct. 286, 288 (1991). A judge's acts are judicial in nature if they are "normally performed by a judge" and the parties affected "dealt with the judge in his judicial capacity." Id. at 288. McLamb does not complain of any actions taken by Judge Smith or the Supreme Court Justices that were nonjudicial in nature. Therefore, his claims should be dismissed with prejudice as frivolous.

Criminal prosecutors also enjoy absolute immunity from claims for damages asserted under §1983 for actions taken in the presentation of the state's case. Graves, supra at 318. As the Supreme Court recently reaffirmed:

> [A]cts undertaken by the prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the

> protections of absolute immunity. Those acts must include the professional evaluation of the evidence assembled by the police and appropriate preparation for its presentation at trial . . . .

Buckley v. Fitzsimmons, 113 S.Ct. 2606, 2615 (1993). Prosecutorial immunity applies to the prosecutor's actions in initiating the prosecution and in carrying the case through the judicial process. Graves, supra at 318. This broad immunity applies even if the prosecutor is accused of knowingly using perjured testimony. Id. at 318 n.9; see also Brummett v. Camble, 946 F.2d 1178, 1181 (5th Cir. 1991) (concluding that state prosecutors were absolutely immune from a §1983 action predicated on malicious prosecution), cert. denied, 112 S.Ct. 2323 (1992); Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986) (en banc) ("[A] conspiracy between judge and prosecutor to predetermine the outcome of a judicial proceeding, while clearly improper, nevertheless does not pierce the immunity extended to judges and prosecutors.") McLamb alleges no facts against Prosecutor Mellen that would destroy Mellen's absolute immunity, and his claims against Mellen should therefore be dismissed with prejudice for failure to state a claim upon which relief can be granted.

A final judgment in accordance with this opinion will be entered.

THIS the _____ day of _____, 1995.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE